* **HIGH COURT OF DELHI : NEW DELHI**

Date of decision: 14th August, 2007

\+ **W.P (C) No. 12395-99 OF 2006**

% Union of India & Ors. .....Petitioner
Through: Mr. A. K. Bhardwaj, Advocate.

versus

Shri Narender Kumar-JE(E) ..... Respondent
Through: Mr. V. P. S. Tyagi with Mr. Amit Kumar, Advocates.

CORAM:

HON'BLE MR.JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J (Oral)

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1. Rule D.B.

2. With the consent of parties, we proceed to finally hear and dispose of this Writ Petition.

3. The Petitioner Union of India and others have preferred this Writ Petition under Article 226 of the Constitution of India to challenge the order dated 17th June 2002 passed by the Central

Administrative Tribunal (The Tribunal) in O.A. No.2711/2004 whereby the Tribunal set aside the order dated 17.6.2002 passed by the Appellate Authority, and further directed the Appellate Authority to consider the Respondent's appeal by passing a detailed speaking order within two months. The Appellate Authority had dismissed the Respondent's appeal preferred against the order of penalty of dismissal passed by the Disciplinary Authority on 19.10.1995. Further consequential directions were also issued by the Tribunal while partly allowing the original application filed by the Respondent.

4. The facts in brief are that the Respondent was posted as Junior Engineer in the Office of the Executive Engineer, PWD, ELECT, DL-DV.9 in the Government of NCT of Delhi. On 17th August 1995, the Petitioner issued a memorandum to the Respondent proposing to hold an inquiry under Rule 14 of the C.C.S. (CCA) Rules 1965. The following articles of charge were framed against the Respondent:

> "ARTICLE I
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> That the said Sh. Narender Kumar, JE is in the habit of absenting himself from Govt. duty. He joined this office on his transfer from Executive Engineer PWD Elect., Divn. 9, Delhi Govt. Delhi on 27.7.2004 A.N. He attended this office only for 110 days as per details given below.
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> 1. 27.07.94 to 21.08.94 i.e. 26 days.
> 2. 06.09.94 to 20.11.94 i.e. 76 days.
> 3. 03.12.94 to 10.12.94 i.e. 08 days.
>
> Last attended on 10.12.1994.
>
> Since 11.12.1994 he has been absenting himself without any intimation. His leave

application w.e.f. 12.12.94 to 09.01.95 on medical ground was received in this office on 12.01.95. His habit of absenting himself without intimating the office amounts to willful absence and has thus violated Rule 3(1) (ii) & (iii) of the C.C.S. (Conduct Rules) 1964.

ARTICLE II

That during the aforesaid period the said Sh. Narendra Kumar, JE(E) has been written many letters given in the Annexure-III to resume duty but he failed to comply with.

ARTICLE III

That Sh. Narender Kumar, JE intimated this office vide his letter Nil. dt. 19.04.95 that he had been unable to join due to family circumstances and would resume duty on 25.04.1995 but he did not turn up till date.

ARTICLE IV

That the said Shri Narendra Kumar, JE(E) has been given final notice through Newspaper published in 'The Hindustan Times' on 21.07.95 and 'Nav Bharat Times' on 0.08.95 and copy sent by Registered/A.D. Post to resume duty within seven days of publication of this notice but he failed to comply."

5. The petitioner submits that despite the issuance of the said memorandum the Respondent did not care to even respond to the said charge sheet. In these circumstances, it is stated, that the Disciplinary Authority namely S.E. (E) resorted to Rule 19(ii) of the C.C.S. (CCA) Rules 1965, thereby dispensing with the holding of an inquiry.

6. A Show Cause Notice bearing No. 7(127)(DCEC/1/E-1/600) dated 28.9.1995 was issued to the Petitioner to show cause as to why

the penalty of dismissal from service may not be imposed upon him. The Show Cause Notice was also published in the National daily, the Hindustan Times on 4.10.1995. The Respondent however failed to respond even to the said Show Cause Notice. Consequently, the Disciplinary Authority passed an order of penalty imposing the penalty of dismissal upon the Respondent on 19.10.1995 with immediate effect and further directed that the period of his absence from duty with effect from 11.12.1992 be treated as '*dias-non*' for all purposes.

7. The Respondent, after a gap of nearly six years, preferred a Departmental Appeal against the order of his dismissal on 15.10.01. The Appellate Authority i.e. Chief Engineer (Elect)-I CPWD refused to entertain the appeal on the ground that the same was barred by limitation, and it did not disclose sufficient cause for not preferring the appeal in time. This order was passed by the Appellate Authority on 17th January 2002.

8. Aggrieved by the aforesaid order, the Respondent preferred the aforesaid Original Application bearing No.2711/2004 before the Tribunal.

9. Before the Tribunal, the primary ground taken by the Respondent to impugn the orders of the Disciplinary Authority, as well as the Appellate Order was that there was non compliance of Rule 19(ii) of the C.C.S. (CCA) Rules 1965, inasmuch as, no reasons had been recorded in writing by the Disciplinary Authority as to why it was

not reasonably practicable to hold an inquiry in the manner provided in the Rules, and that there was nothing to show that the Disciplinary Authority had applied its mind to the circumstances of the case to conclude that the holding of the formal inquiry under Rule 14 is not reasonably practicable and the same should be dispensed with.

10. On the other hand, the Petitioner at the threshold raised the objection that the order of the Disciplinary Authority had merged in the order of the Appellate Authority and that the Appellate Authority had rejected the appeal on the ground of limitation. The Petitioner also denied having received any application for revision, as was claimed to have been submitted by the Respondent.

11. The Tribunal recognised the position that the Respondent's appeal was beyond the period of limitation. The Tribunal also did not accept the Respondent's submission that he had preferred a revision petition. However, the Tribunal, despite the aforesaid finding with regard to the bar of limitation in preferring of the Departmental Appeal, proceeded to consider the Respondent's submission based on Rule 19(ii) of the C.C.S. (CCA) Rules 1965 and passed the impugned order setting aside the appellate order dated 17.6.2002 on the ground that no reasons have been recorded by the Disciplinary Authority in his order to justify his conclusion that it was not reasonably practicable to hold an inquiry in the manner provided in the Rules.

12. Having heard learned counsel for the parties and given our

due consideration to the matter, we are of the view that the Tribunal has erred in interfering with the appellate order dated 17.6.2002 whereby the Departmental Appeal of the Respondent was rejected on the ground of limitation.

13. In paragraph 4 of the impugned order, the Tribunal recorded the submissions of the Petitioner herein which are based on the record, and with which there is no serious dispute. Since the same is of relevance, we set out relevant portion of para 4 of the impugned order which reads as follows:

> "4. On the other hand, learned counsel for respondents stated that applicant joined Elect. Division-II on 27.7.94. Vide registered letter dated 27.1.95 EE(E)-ED-II asked the applicant why he had not intimated to the office about his illness and why he had not obtained the treatment from Government Hospital and had remained absent from office without obtaining leave. Then, letters dated 6.3.1995, 7.3.1995, 4.4.95, 28.4.95 and 22.5.95 were sent to the applicant informing him of his unauthorized absence and asking him to report for duty. By a letter dated 19.4.95, applicant had informed that he would join his duty on 25.4.95 but he did not do so. Finally press notices were published on 19.7.95 both in Hindi and English, asking the applicant to report for duty within a week's time of the notices. Copies of these letters were sent by registered AD to the two known addresses of the applicant. Acknowledged receipts whereof are in the file. When neither any response was received from the applicant nor did he report for duty, the said charge sheet was issued against him at both the known addresses. The acknowledgment of the receipt of the charge sheet was also there in record."

14. Despite being served with the charge sheet, the Respondent neither gave a written reply, nor sought a personal hearing in the matter. In the aforesaid factual background, the Disciplinary Authority issued a Show Cause Notice dated 28.9.1995 requiring the Respondent to show cause as to why the penalty of dismissal of service may not be imposed upon him. Even this Show Cause Notice was published in the National daily, Hindustan Times on 4th October 1995. Consequently, the Disciplinary Authority on 19.10.1995 passed the following order:

> "CENTRAL PUBLIC WORKS DEPARTMENT
>
> No.7/127/95-DCECI/E1/655 New Delhi dated 19.10.95
>
> ORDER
>
> WHEREAS disciplinary proceedings under rule 14 of the CCS (CC&A) Rules, 1965 were initiated against Shri Narendra Kumar, Junior Engineer (Elect.) vide Memo No.7(127)/95-DCEC/1/E-1/526 dated 17th August 1995 for the continuous unauthorized absence from date since 11th December 1994.
>
> AND WHEREAS Shri Narendra Kumar, Junior Engineer (Elect.) was given an opportunity of personal hearing and offer his written explanation.
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> AND WHEREAS Shri Narendra Kumar, Junior Engineer (Elect.) has not filed his reply tot he Charge Sheet/Memo dated 17th August 1995 nor available opportunity of personal hearing.
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> AND WHEREAS it is considered that the charge of absence from duty without prior permission of the competent authority leveled against Shri

Narendra Kumar, Junior Engineer (Elect.) stands proved.

AND WHEREAS the undersigned being disciplinary authority had come to conclusion that Shri Narendra Kumar, Junior Engineer (Elect.) has acted as an irresponsible officer and appears not to be interested in the service of the Central Public Works Department and in the circumstances referred to above, the ends of justice will be met with, if the penalty of dismissal from services of Central Public Works Department is imposed upon him. He was accordingly issued a Show Cause Notice No.7(127)(DCEC/1/E-1/600 dated 28.9.95 as to why the penalty of dismissal from service may not be imposed upon him. The Show Cause Notice was also published to the daily Hindustan Times on 4.10.95.

AND WHEREAS Shri Narendra Kumar, Junior Engineer (Elect.) has not filed any reply to the Show Cause Notice

NOW THREFORE, in exercise of the Powers conferred by Rule 19(11) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, the undersigned is to impose the penalty of dismissal from the Central Government Service with immediate effect and the period of his absence from duty with effect from 11.12.1994 to date has been treated as "Dies-non" for all the purposes.

Sd/-

(A.K. Jain)
Superintending Engineer (E)
Delhi Central Elect. Circle No.I
CPWD New Delhi
Ph 331 8606"

15. Having itself noticed the admitted position that the appeal preferred by the Respondent was beyond limitation, the Tribunal ought

not to have interfered with the same by going into the merits of the case. The Tribunal was examining the correctness of the Appellate Order, which only raised the point of limitation. The only question that arose for the consideration of the Tribunal was whether the Appellate Authority was justified in not entertaining the respondents appeal on account of the bar of limitation, and whether there was disclosure of sufficient cause by the respondent to justify the highly belated filing of the appeal. Only if the Tribunal had found that the Appellate Order was laconic on this aspect of the matter, could it have set it aside and remanded the matter back for reconsideration by the Appellate Authority.

16. It appears that no serious attempt was made by the Respondent either to urge that the Departmental Appeal was preferred within the period of limitation, or that he had disclosed sufficient cause for the delay in preferring of the Departmental Appeal to be condoned. The Tribunal without even dealing with the aforesaid aspect of limitation, and without upsetting the Appellate Order on that score, straightaway proceeded to consider the other submission of the Respondent founded upon Rule 19(ii) of the C.C.S. (CCA) Rules 1965, which was, in our view, not permissible.

17. In ***LIC v. Jyotish Chandra Biswas,*** (2000) 6 SCC 562, the Respondent was proceeded against departmentally and dismissed from service on 28.1.1969. He challenged the same by filing a writ

petition on 25.3.1975. The learned Single Judge dismissed the petition on merits and also on the ground of unreasonable delay and laches in approaching the court. However, the Division Bench allowed the appeal on the ground that the Respondents/employees right of appeal had been taken away due to the fact that the penalty order had been passed by the Appellate Authority instead of the Disciplinary Authority. The Hon'ble Supreme Court overruled the decision of the Division Bench by observing that the writ petition had been filed, challenging the order of termination, almost after a period of six years for which there was no explanation. The Respondent sought for his re-employment after almost five years of his dismissal. This only indicates that he had accepted the order of termination of his services, if not expressly, impliedly.

18. We may notice that the aforesaid was a case, where the delay and laches pertained to the filing of a writ petition under Article 226 of Constitution of India, for which there is no prescribed period of limitation. As opposed to that situation, in the present case, there is a prescribed/statutory period of limitation contained in Rule 25 of the CCS (CCA) Rules, 1965. The said Rule prescribe a period of limitation of 45 days for filing an appeal from the date on which a copy of the order appealed against is delivered to the appellant. The said Rule reads as follows:

“25. Period of limitation of appeals

> No appeal preferred under this part shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copyof the order appealed against is delivered to the appellant:
>
> Provided that the Appellate Authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time."

19. We note that Rule 25 begins with the words "No appeal preferred under this part shall be enteretained unless such appeal is preferred within a period of forty five days...".

20. The clause is worded negatively and therefore calls for a strict interpretation. Consequently, the ratio of ***Jyoti Chandra Biswas (Supra)*** applies with even greater force to the facts of the present case.

21. We have also examined the averments made in the O.A. before the Tribunal, and the counter affidavit filed in those proceedings to satisfy ourselves if the respondent had disclosed any explanation for the inordinate delay in preferring his appeal before the Appellate Authority. It appears that the respondent had claimed that he reported in his office to join duties after 22nd May, 1995 after he was threatened with disciplinary action, but he was turned away on the ground that he had been suspended from service. However, no suspension order was filed by the respondent. In this O.A., he further claimed that he did not learn of any developments in the enquiry

proceedings, though he says in his statutory appeal dated 15.10.2001 that he came to know that charge sheet in the matter was framed under Rule 14 of the CCS (CCA) Rules 1965 and inquiry was ordered to be held against him. However, he does not say how and when he learnt of the inquiry proceedings. He states that he, vide his letter dated 3.8.1999, he demanded all the documents related to the case, i.e., the charge sheet enquiry report and final order passed by the competent authority to enable him to make an appeal to the Appellate Authority. He says that a copy of the charge sheet and termination order was made available, but he misplaced the same. He states that he sent reminders on 4.2.2000 and 7.6.2000 which were not replied. He claims that then he personally visited the office of the Superintendent Engineer (E), Delhi Central Elect. Circle No.-1, CPWD, New Delhi. He states that he could lay his hands on a photocopy of the order of penalty dated 19.10.1995 on 30.3.2001 after making concerted efforts and thereafter the appeal was filed.

22. The petitioner herein refuted the aforesaid averments in their counter affidavit before the Tribunal. It was denied that the respondent was placed under suspension. The petitioner also denied having received any communications dated 4.2.2000 or 7.6.2000 from the respondent. The petitioner also stated that the penalty order dated 19.10.1995 was not only published in the news paper, but even sent by Regd. A.D. Post. The petitioner also denies any personal

contact by the respondent.

23. It appears the the respondent, to explain his continued absence concocted a plea of having been suspended. If he had been suspended, there would have been an order to that effect. The communications the respondent claims to have sent after his dismissal are also without any proof of delivery. The petitioners denied on solemn affirmation, having received them. We are inclined to believe the petitioners' statement on oath since no malafides have been alleged or made out, and there was no reason for the petitioner to have suppressed the receipt of the communications allegedly sent by the respondent, had the same been sent in fact.

24. Even according to the respondent's version he had got a copy of the penalty order in 1998. Yet he did not prefer an appeal at that stage. The statements made by the respondent to explain the inordinate delay in filing the departmental appeal are most vague and devoid of particulars and unconvincing.

25. To us, it appears that the Respondent had accepted his dismissal from service in October 1995 and, much later, after six years decided to challenge the same by preferring a statutory appeal, which was not permissible in the facts of this case.

26. In view of the aforesaid, the approach of the Tribunal in brushing aside the ground on which the Respondent's Departmental Appeal was not entertained was erroneous.

27. For the reasons aforesaid, we quash and set aside the impugned order passed by the Tribunal in O.A. No.2711/2004 dated 16.1.2006 and resultantly dismiss the O.A. bearing No.2711/2004 filed by the Respondent in the Tribunal.

No costs.

VIPIN SANGHI, J.

A.K.SIKRI, J.

August 14, 2007
P.K. BABBAR